

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OPERATING ENGINEERS' LOCAL 324  
FRINGE BENEFIT FUNDS and  
TRUSTEES OF THE OPERATING  
ENGINEERS' LOCAL 324 FRINGE  
BENEFIT FUNDS,

Case No. 13-cv-13033

HONORABLE STEPHEN J. MURPHY, III

Plaintiffs,

v.

TESTA CORP. and STEVEN D. TESTA,

Defendants.

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**ORDER ADOPTING  
REPORT AND RECOMMENDATION  
REGARDING PLAINTIFFS' FEBRUARY 25, 2014  
BRIEF REGARDING DAMAGES (document no. 31) AND GRANTING  
PLAINTIFFS' APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS**

On July 16, 2013, Plaintiffs filed their complaint alleging claims for damages and injunctive relief against Defendants, a corporation and a citizen of Massachusetts, for violating their collective bargaining agreement by not making certain contributions to the Plaintiff fund. After Plaintiffs made a request for a clerk's entry of default as to Defendant Testa Corp., the clerk of the Court made an entry of default on October 8, 2013. Clerk's Entry of Default, ECF No. 7. Plaintiffs then made an application for default judgment against Testa Corp., requesting that the Court enter a default judgment ordering Testa Corp., its successors, or alter egos, to produce records, make its required contributions to Plaintiffs, and pay various damages, attorney's fees and costs, and interest. Application for Default J. against Testa Corp., ECF No. 8. On October 17, 2013, the Court referred the application to the magistrate judge.

On November 18, 2013, the magistrate judge issued a Report and Recommendation ("Report") in which he recommended that the Court enter a default judgment against Testa Corp as to liability and that the Court conduct a hearing pursuant to Civil Rule 55(b)(2) to determine the amount of damages. Report & Recommendation Regarding Application for Default J., ECF No. 10. By order dated November 26, 2013, the Court adopted the Report, entered a default judgment against Testa Corp., and referred the matter to the magistrate judge to conduct a hearing and make a recommendation regarding the appropriate judgment amount. Order Adopting Report & Recommendation & Referring to Magistrate Judge for Hearing to Determine the Amount of Damages, ECF No. 11.

After Plaintiffs made a request for a clerk's entry of default as to Defendant Steven Testa, the clerk of the Court made an entry of default on January 8, 2014. Clerk's Entry of Default, ECF No. 17. The Clerk of the Court rejected Plaintiffs' attempts to file subsequent applications for default judgments against Defendants. See ECF Nos. 18-26. On February 25, 2014, Plaintiffs filed a supplemental brief regarding damages, which the Court also referred to the magistrate judge. The magistrate judge conducted a hearing regarding damages on March 6, 2014. On March 12, 2014, the magistrate judge issued a Report recommending the amount of damages against Defendants. Report and Recommendation Regarding Plaintiffs' February 25, 2014 Brief Regarding Damages, ECF No. 31 ("Damages Report.").

The magistrate judge found that Defendants failed to respond after being properly served with the summons and complaint, that the Clerk had entered defaults against both Defendants, that the Plaintiffs' complaint and declaration provide a sufficient basis for entry of a default judgment, and that the amount of damages sought is reasonable with one

exception. Damages Report 2-4. Plaintiffs requested a judgment for \$17,536.60 owing as of January 9, 2014 and interest on that amount from January 10, 2014 onward at a twelve percent annual rate. Pl.'s Brief regarding Damages 2, ECF No. 28. The requested judgment consists of \$11,537.81 for audit billing covering work performed through June 2013, \$1,034.88 in liquidated damages on untimely paid contributions for July and August 2013 work, and \$4,963.91 in interest as of January 9, 2014. *Id.* at 1. The magistrate judge did not find support for the claimed \$430.64 in liquidated damages resulting from the audit. Damages Report 5. As a result, the magistrate judge recommended that, if Plaintiffs would provide further explanation for the alleged \$430.64, the Court should enter default judgement against Defendants in the amount of \$17,536.60 owing as of January 9, 2014 as well as interest on that amount from January 10, 2014 at a twelve percent annual rate. *Id.* Otherwise, the magistrate judge recommended reducing the amount of judgment sought by \$430.64. *Id.*

The Court has reviewed the Damages Report, along with Plaintiffs' complaint and motion, and agrees with the magistrate judge's recommendation. On March 12, 2014, Plaintiffs filed a supplement to their brief regarding damages. Supplement to Brief Regarding Damages, ECF No. 32. The Court finds that therein Plaintiffs have provided sufficient further explanation for the alleged \$430.64, which constitutes liquidated damages representing ten percent of the unpaid contributions with the exception of \$13.20 in contributions owing to the Industry Advancement Fund on which liquidated damages were not assessed. *Id.* at 2. Accordingly, the Court will grant Plaintiffs' motion for default judgment.

**WHEREFORE**, it is hereby **ORDERED** that the report and recommendation (document no. 31) is **ADOPTED** and Plaintiffs' application for default judgment against Testa Corp. (document no. 8) and supplemental request for default judgment against Steven D. Testa (document no. 28) are **GRANTED**.

**SO ORDERED.**

s/Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: April 14, 2014

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 14, 2014, by electronic and/or ordinary mail.

s/Carol Cohron  
Case Manager